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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12783 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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ANILABEN J. JOSHI

Versus

STATE OF GUJARAT

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Appearance:

MR SH SANJANWALA for Petitioners

MR KC SHAH for Respondents.

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CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 03/08/96

ORAL JUDGEMENT

By this petition under Article 226 and 227 of the Constitution of India, the petitioners have questioned the legality and validity of the judgment and order of the Gujarat Revenue Tribunal dated 26.7.93 recorded in Revision application No.125/92 whereby the judgment and order passed by the Deputy Collector, Valsad in Ceiling

Appeal No.12/92 dated 26.6.92 remanding the case to the Mamlatdar, came to be confirmed while dismissing the revision on merits.

Facts run in a narrow compass. One Jaykrishna Ramashankar Joshi had filled in form No.2 under section 10 of the Gujarat Agricultural Lands Ceiling Act, 1960 (Gujarat Act No.XXVII of 1961) (GALC Act). In the said form, it was stated that he was holding 10 acres 4.5 gunthas of agricultural land and also 10 acres of agricultural lands at village Haladpada, Tal:Dahanu in Maharashtra State. The declarant had also stated in the form that there were 4 members in his family and there was no excess or surplus land.

The Mamlatdar & A.L.T. (Ceiling) Umargam in Ceiling Case No.47/91 by his order dated 29.7.91 held that the petitioners were not holding any excess land in the State of Gujarat and also in the State of Maharashtra. Therefore, notice against them came to be withdrawn. Thereafter, the Deputy Collector, Valsad in Ceiling Appeal No.12/92 by his order dated 4.7.92 remanded the matter to the Mamlatdar and A.L.T. Umargam quashing his order. The Appellate Authority directed the Mamlatdar and A.L.T. for rehearing on three points stated in his order by exercising his power under section 37 of the GALC Act. Being aggrieved by the order of remand recorded by the Deputy Collector, Valsad, the petitioners questioned the legality and validity of the same by filing a revision before the Gujarat Revenue Tribunal invoking the aids of the provisions of section 38 of the GALC Act which came to be rejected confirming the order of the Deputy Collector. Hence this petition.

The learned counsel for the petitioners has submitted that the impugned order of the Deputy Collector, Valsad passed on 4.7.92 is patently illegal as the revision was filed against dead person. It is a settled proposition of law that any order or judgment or decision passed against dead person is a nullity. No Court or authority has jurisdiction to pass any order or judgment in favour or against a dead person. It is a matter of common knowledge that courts or authorities could pass orders or judgments in matters which are competently filed before them and not in non-existence matters.

It appears from the record that the appeal was filed by the Deputy Mamlatdar against Jaikrishna Ramashankar Joshi, original holder of the land. He was dead on the date when the appeal was filed. Deceased Jaikrishna Ramashankar Joshi died on 23.2.87 and the appeal was

filed by the Deputy Collector against a dead person, viz. Jaikrishna Ramashankar Joshi. It was, therefore, contended that the appeal was a nullity and the judgment and order passed in the appeal against a dead person is illegal and non-est.

Prima facie, the aforesaid contention would appear to be captivating, but not convincing, subtle but not sound in the light of the facts emerging from the record of the present case. There is no dispute about the fact that appeal was filed by the Deputy Mamlatdar stating the name of dead person, viz. Jaikrishna Ramashankar Joshi. However, the decision rendered therein cannot be said to be illegal or nullity in view of the following peculiar facts and circumstances of the case.

It appears that the name of the deceased was mistakenly shown in the title of the appeal filed by the Deputy Mamlatdar. Since the deceased Jaikrishna Ramashankar Joshi had filled in the requisite form No.2 under section 10 of the GALC Act, his name appears to have been mistakenly mentioned in the title of the appeal filed by the Deputy Mamlatdar. Notice of that appeal came to be issued to the petitioners who are the heirs of the deceased Jaikrishna Ramashankar Joshi. They appeared, engaged advocate, and various adjournments were granted at the instance of the advocate for the petitioners who are the heirs of the deceased and the matter was fought out fully. So, there was no question of filing an appeal against a dead person rendering the decision therein as nullity. It was mistakenly and wrongly mentioned in the title, but in reality, all the petitioners, who are the heirs of the deceased were issued notice and they had contested the appeal.

Deceased Jaikrishna Ramashankar Joshi died on 23.2.87. The first order of the Mamlatdar and A.L.T. was recorded on 21.7.86 in Ceiling Case No.32/77 when the deceased was alive. Thereafter, Revision No.1070/87 came to be filed before the Deputy Collector, who partly allowed the same and remanded the matter to the Mamlatdar by passing order on 29.4.87. Thus, the day on which the order was passed in the revision by the Deputy Collector, Valsad in Revision No.1070/87, the deceased had passed away. After the remand in the aforesaid revision, fresh inquiry was conducted by the Mamlatdar and A.L.T. Umargam and by his order dated 8.3.90 found some land surplus. Obviously, when the order came to be recorded by the Mamlatdar in that case, the deceased Jaikrishna Ramashankar Joshi was not alive. Again the petitioners, as heirs and legal representatives of the deceased, challenged the said

order by filing appeal No.17/90 before the Deputy Collector, Valsad, who partly allowed the appeal by his order dated 20.11.90.

Again fresh inquiry was conducted by the Mamlatdar and ALT, Umargam in Ceiling Case No.47/91 after the order of the Deputy Collector dated 20.11.90. This is the third order of the Mamlatdar & A.L.T. who by his order dated 29.7.91 dropped the proceedings and discharged the notice against the petitioners. Appeal No.12/92 came to be filed against the order of the Mamlatdar & A.L.T. dated 29.7.91 before the Deputy Collector, Valsad who by his order dated 26.6.92 remanded the matter to the Mamlatdar and A.L.T. The petitioner being aggrieved by the said order of remand preferred a revision application No.125/92 before the Gujarat Revenue Tribunal, wherein they lost. The Gujarat Revenue Tribunal, after considering all the facts and circumstances, including the contentions raised hereinbefore, decided the revision on merits and dismissed the revision confirming the remand order of the Deputy Collector, Valsad.

In view of the aforesaid facts and circumstances, it cannot be even for a moment suggested that by mere mention of the deceased in one of the matters, the subsequent proceedings would be rendered illegal or as nullity. In fact, the mistake on the part of an authority in mentioning the name of the deceased in one of the appeals, where the petitioners who are the legal heirs and representatives were issued notice and who appeared and contested the matter, could not be characterised as an appeal against a dead person. Apart from the fact that there was no prejudice to the petitioners, there is no substance in the contention that the appeal was against a dead person and therefore it is a nullity. It is nothing but an attempt to try to catch a straw when drowning. What is the use of polishing brass when the whole ship is sinking ? After having examined the aforesaid facts and circumstances, this Court has no hesitation in finding that there is no substance in the present petition. The contentions which are raised before this Court were also agitated before the Tribunal and the Tribunal has rightly rejected those contentions. Again, it must be noted that the impugned order of the Deputy Collector is for remand to the Mamlatdar & A.L.T. for fresh inquiry after giving an opportunity to the parties. The order remanding the case to the Mamlatdar and A.L.T. has rightly been upheld by the Tribunal in the revision while dismissing it. This Court is satisfied that the impugned order of the Tribunal confirming the order of the Deputy Collector,

Valsad, remanding the matter is fully justified.

Therefore, this petition is required to be rejected being meritless. Accordingly, it is rejected. Rule discharged. Ad interim relief, obviously, shall stand vacated.

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Note:

Section 6 of the GALC Act needs to be referred.